

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DUBI ZIGELSTEIN,

Plaintiff,

**SECOND AMENDED
COMPLAINT**

-against-

Jury Demand

24 CV 7923

THE CITY OF NEW YORK,
BIDYUT RAY (badge 2861)
JOHN DOE 1-3

Defendants.
-----X

Plaintiff DUBI ZIGELSTEIN (“Plaintiff”) by and through his attorney
Vik Pawar, Esq., respectfully allege as follows:

SUBJECT MATTER JURISDICTION

This Court has subject matter jurisdiction because the complaint alleges that defendants violated various federal and state constitutional rights of the plaintiff while acting under the color of state law. This action is brought pursuant to 42 U.S.C. Sections 1983 and 1988. The plaintiff also invokes this Court’s supplemental jurisdiction under 42 U.S.C. Section 1367.

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney’s fees for violations of their civil rights, as secured by statutes and the Constitution of the United States and the State of New York.

2. Plaintiff has complied with conditions precedent to filing state law claims by filing timely notices of claim, attending 50h hearings and giving the City adequate time

to settle their claim and this lawsuit is commenced within one year and ninety days of the incident.

PARTIES

3. Plaintiff is a citizen of the United States, and at all relevant times a resident of the County of Queens, and CITY and State of New York.

4. Defendant CITY of New York (hereinafter “CITY”) was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

5. The named Defendant and Doe defendants is/was employed by the CITY and acted under the color of state law and is sued in his individual capacity.

FACTS

6. Plaintiff owns a business in Manhattan and resides in Queens.

7. On February 1, 2024, at approximately 6 p.m. plaintiff was travelling in his work vehicle towards the Queensborough Bridge (“Bridge”) to go home.

8. As it normally is, traffic was heavy getting out of Manhattan on the Bridge.

9. As plaintiff proceeded in his vehicle, he was sideswiped by a MTA bus.

10. The impact placed plaintiff’s vehicle in an undesignated lane and he could not move.

11. Plaintiff wanted to obtain the information from the MTA bus to submit to his insurance company.

12. At that point defendant RAY came to plaintiff and began to yell and scream obscenities towards him.

13. Plaintiff attempted to explain that he needed to obtain the MTA bus information to submit to his insurance company.

14. However, defendant Ray and other Doe defendants ignored him and continued yelling.

15. At some point, defendant RAY and other Doe defendants refused to assist plaintiff and started assaulting him with their flashlights.

16. As a result of the assault plaintiff was injured and continues to receive treatment.

AS AND FOR A FIRST CAUSE OF ACTION

(Assault and Battery)

17. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

18. The Defendants committed acts that caused harm to Plaintiff.

19. The Defendants intended to inflict injury or pain on Plaintiff.

20. As a reason of the assault and unlawful battery by the Defendants Plaintiff was apprehensive and suffered physical and emotional injuries.

AS AND FOR A SECOND CAUSE OF ACTION

(Harassment)

21. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

22. The Defendants intended to harass, annoy or alarm Plaintiff.

23. These defendants acted in a way that caused Plaintiff to be harassed, annoyed and alarmed.

24. As a result of their conduct, Plaintiff suffered and continue to suffer mental

and physical injuries.

AS AND FOR A THIRD CAUSE OF ACTION

(Intentional and Negligent Infliction of Emotional Distress under the laws of New York)

25. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

26. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

27. The aforementioned conduct was committed by Defendants while acting within the scope of their employment by Defendant City.

28. The aforementioned conduct was committed by Defendants while acting in furtherance of their employment by Defendant City.

29. The aforementioned conduct was intentional and for the sole purpose of causing severe emotional distress to Plaintiff.

30. As a result of the aforementioned conduct, Plaintiff suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

AS AND FOR A FOURTH CAUSE OF ACTION

(Violation of NYS and NYC Human and Civil Rights Law)

31. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

32. Defendants conduct herein denied Plaintiff the equal protection of the law, discriminated against them and caused their injuries.

33. As a result, Plaintiff's rights protected by the New York State and New York City Human Rights Laws were violated.

AS AND FOR A FIFTH CAUSE OF ACTION

(Negligent Screening, Training, Hiring, and Retention under the laws of the State of NY)

34. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

35. Defendant City owed a duty to individuals like Plaintiff to properly screen, train, hire and then appropriately discipline its employees.

36. Defendant City breached its duty and failed to use reasonable care in the screening, hiring, retraining and retention of the aforesaid individual Defendants who conducted and participated in the violation of Plaintiff's rights.

37. As a result, Plaintiff suffered injuries.

AS AND FOR A SIXTH CAUSE OF ACTION

(Negligence under the laws of the State of New York)

38. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

39. Defendant City owed a duty to individuals like Plaintiff.

40. Defendant City breached its duty when individual and DOE Defendants engaged in and participated in the violation of Plaintiff's rights.

41. As a result, Plaintiff suffered injuries.

42. Plaintiff's physical and emotional injuries herein were caused by the carelessness, recklessness and negligence of the Defendant and their employees and agents, who were on duty and acting in the scope of their employment engaging in the wrongful conduct described herein.

AS AND FOR A SEVENTH CAUSE OF ACTION

(Respondeat Superior liability under the laws of the State of New York)

43. Plaintiff repeats, reiterates, and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

44. Defendant City is vicariously liable for the acts of its employees and agents who were on duty and acting in the scope of their employment when they engaged in the wrongful conduct described herein that caused Plaintiff' irreparable physical and emotional injuries.

AS AND FOR AN EIGHTH CAUSE OF ACTION

(Fourth and Fourteenth Amendments- unlawful seizure/excessive force)

45. Plaintiff repeats, reiterates and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

46. Defendants used force and brute to seize Plaintiff and physically assaulted him.

47. These defendants also failed to intervene to stop the assault on plaintiff.

48. Plaintiff was subjected to obscenities and physical assaults by the individual defendants.

49. As a result plaintiff suffered injuries.

WHEREFORE, Plaintiff seeks judgment against the defendant individually, jointly, severally in the amount of \$250,000.00 for each and every cause of action, costs, expenses and attorney fees, and any other relief that the Court may deem just and proper.

Dated: December 11, 2024
New York, New York 10007

Respectfully,

/S VIK PAWAR
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